



## DEPARTMENT OF MANAGEMENT SERVICES

Pursuant to the General Work Plan (section 3.01) of the Comprehensive Energy Strategy, ITN No. DMS 01/2002-013, the Department of Management Services desires to put the following vendors on state term contract for the purpose of helping State Agencies and Eligible User's meet the Governor's energy goals and objectives which include but are not limited to the following:

- A. Reducing energy consumption of state agencies by a minimum of five percent (5%) annually;
- B. Significantly reducing energy or operation costs through energy conservation measures;
- C. Increasing the efficient use of energy sources, including electricity, natural gas, water, fuel, oil and liquefied propane gas throughout the state agencies;
- D. Increasing energy awareness and promoting energy efficiency;
- E. Encouraging the use of renewable energy;
- F. Improving the quality of indoor air in state facilities;
- G. Ensuring that energy conservation measures are consistent with environmental objectives.

The ITN sought responses from various vendors pursuant to this directive that would include not only a comprehensive and systematic energy efficiency evaluation but recommendations for and implementation of energy conservation measures designed to achieve significant energy cost savings and at a minimum a five percent (5%) reduction in energy consumption.

The Department of Management Services believes that upon extensive review of the vendor's responses as well as their interactive presentations and pursuant to the criteria set forth in the ITN (Part IV, Criteria for Selection) the following vendors should be placed on State Term Contract:

- |                                      |                            |
|--------------------------------------|----------------------------|
| 1. Florida Power/SRS                 | 5. TECO BGA, Inc.          |
| 2. Florida Power & Light Company     | 6. Sempra Energy Solutions |
| 3. The Trane Company                 | 7. Johnson Controls        |
| 4. Siemens Building Technologies Inc | 8. CMS/Viron               |

DMS in conjunction with other State Agencies of similar needs and interest shall work with the selected vendors on state term contract to further define the scope of services necessary to accomplish the Governor's objectives on energy conservation for their specific buildings. At an appropriate time following the posting, selected vendors will be invited to participate in a workshop with the applicable agencies to establish priorities for each of the buildings in question. Once these priorities and goals have been established, vendors shall submit specific pricing for the measures through the process of a Request for Quote (RFQ). Agencies will then have the discretion to choose which vendor best meets the Governor's directives and their own specific needs relating to energy conservation through a competitive pricing environment.

## CONTRACT

This Contract, effective the last date signed below, is by and between the State of Florida, Department of Management Services ("Department"), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and Johnson Controls, Inc., a Wisconsin corporation with offices at 3802 Sugar Palm Drive, Tampa, Florida 33619 ("Contractor").

The Contractor responded to the Department's Invitation to Negotiate No. DMS 01/2002-013, Comprehensive Energy Strategy. Having evaluated Contractor's response, the Department has determined to enter into this Contract. Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract. The Contract is a state term contract authorized by section 287.042(2)(a) of the Florida Statutes (2001). The term of the Contract is from the effective date to June 30, 2004.

The primary purpose of this Contract is to enable Contractor to perform work for agencies of the State of Florida, and for other eligible users of state term contracts (collectively, "Customers"), under the Guaranteed Energy Performance Savings Contract Act, codified at section 489.145 of the Florida Statutes (2001), and under section 235.215 of the Florida Statutes (2001). Pursuant to section 489.145(6), the Office of the Comptroller has developed model agreements and related forms that affected agencies shall use, and others may use, to effect a purchase under this Contract (electronic copies of the model agreements are available at the Department's web page devoted to this project, which is currently <http://fcn.state.fl.us/dms/dfm/energy/energy.html>). A purchase agreement effected under this Contract shall survive expiration of the Contract in accordance with the agreement's terms.

Customers' and Contractor's attention is directed to subsection 489.145(4)(b) of the Florida Statutes (2001), which provides (emphasis added):

*Before design and installation of energy conservation measures, the agency must obtain from a guaranteed energy performance savings contractor a report that summarizes the costs associated with the energy conservation measures and provides an estimate of the amount of the energy cost savings. The agency and the guaranteed energy performance savings contractor may enter into a separate agreement to pay for costs associated with the preparation delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of energy cost savings being equal to or greater than the total projected costs of the design and installation of the report's energy conservation measures.*

At the Department's web page devoted to this project, Customers and Contractor will find a Model Investment Grade Energy Audit Agreement they may use to procure the report required by subsections 235.215(3)(d) and 489.145(4)(b) of the Florida Statutes.



## Exhibit 1 – General Conditions

### Contents

- 1.01 Definitions
- 1.02 Eligible Customers
- 1.03 Purchase Orders
- 1.04 Annual Appropriations
- 1.05 Surcharge Fee and Summary of Total Sales
- 1.06 Compliance with Laws
- 1.07 Lobbying and Integrity
- 1.08 Performance Bond
- 1.09 Suspension of Work
- 1.10 Termination for Convenience
- 1.11 Advertising
- 1.12 Notice
- 1.13 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)
- 1.14 Modification of Terms
- 1.15 Execution in Counterparts
- 1.17 Severability

### 1.01 Definitions:

“Contract Specialist” means the Facilities employee who is primarily responsible for administration of the Contract. Currently, the Contract Specialist is Chris Keena, Director of Facilities. The Department may appoint a different Contract Specialist, which shall not constitute an amendment to the Contract, by sending notice to Contractor. Any communication to the Department by Contractors, by State Customer contract managers or contract administrators, or by other Customer purchasing officials, shall be addressed to the Contract Specialist.

“Customer” means the State agencies and other eligible users that will order products directly from the Contractor under the Contract. By ordering products under the Contract, the Customer agrees to its terms. Customers are not, however, parties to the Contract.

“Department” means the Florida Department of Management Services. “Facilities,” a division within the Department, is responsible for day-to-day administration of the Contract. Facilities may be reached at 4030 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950, (850) 487-4634, or via links posted at <http://www.myflorida.com/myflorida/business/index.html>. The Department reserves the right to contract with a third-party service provider to assume responsibility for administration of the Contract.

“Product” means any deliverable under the Contract, which may include commodities, services, technology or software.

"Purchase Order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, Comptroller-approved agreement, or other authorized means).

"State" means the State of Florida and its agencies.

**1.02 Eligible Customers:** Section 287.056 of the Florida Statutes governs use of the Contract. Customers participating in the Contract do so according to the following terms: (1) non-State Customers assume and bear complete responsibility with regard to performance of any contractual obligation or term; (2) breach of a Contract term by any particular Customer shall not be deemed a breach of the Contract as a whole, which shall remain in full force and effect, and shall not affect the validity of the Contract nor the Contractor's obligations to non-breaching Customers or the Department; (3) the State shall not be liable for any breach by a non-State Customer; (4) each non-State Customer and the Contractor guarantee to save the State and its officers, agents, and employees harmless from liability that may be or is imposed by their failure to perform in accordance with their obligations under the Contract.

**1.03 Purchase Orders:** A Contractor shall not deliver or furnish products until a Customer transmits a Purchase Order. All Purchase Orders shall bear the Contract number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A Purchase Order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Even where not otherwise required, **CUSTOMERS ARE ENCOURAGED TO INCLUDE PROVISIONS THAT PROMOTE GOOD CONTRACT MANAGEMENT PRACTICES AND ENABLE THE CUSTOMER AND CONTRACTOR TO MONITOR AND ADJUST PERFORMANCE**, for example, provisions clearly defining the scope of the work, provisions dividing the order into objectively measured deliverables, provisions setting forth schedules for completion and (where appropriate) liquidated damages for untimely completion, etc. State Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes. The Department reserves the right to revise this section in conjunction with implementation of an on-line procurement system.

**1.04 Annual Appropriations:** The State's performance and obligation to pay under the Contract are contingent upon an annual appropriation by the Legislature.

**1.05 Surcharge Fee and Summary of Total Sales:** Pursuant to section 287.1345 of the Florida Statutes, a surcharge fee of one percent (1.0%) is imposed on Contractor's sales under the Contract. The fee shall be paid by the Contractor and must be included in prices bid and cannot be added as a separate item. After receipt of payment from the Contract purchases, all Contractor surcharge fees shall be payable to the Department no later than 15 days after the end of each quarter. The Contractor shall note "surcharge fee" and the contract number on a check and remit it to:

Florida Department of Management Services  
P.O. Box 5438  
Tallahassee, FL 32314-5438

At the end of each calendar quarter, the Contractor shall complete and submit to State Purchasing the Vendor User Fee Report form (PUR 7073C) included in section 4.0 of these solicitation documents. By submission of these reports and corresponding Contractor surcharge deposits, Contractor is certifying their correctness. All such reports and fee deposits shall be subject to audit by the State. Contractors shall be responsible for reporting sales and paying user fees resulting from sales made by authorized resellers. The Department reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering repurchase costs from the Contractor in addition to all outstanding surcharge fees. **CONTRACTORS DELINQUENT IN PAYING USER FEES MAY BE EXCLUDED FROM BIDDING ON DEPARTMENT CONTRACTS.**

**1.06 Compliance with Laws:** The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

**1.07 Lobbying and Integrity:** Pursuant to section 216.347 of the Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the

Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**1.08 Performance Bond:** Customers may require the Contractor to furnish without additional cost a performance bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of work under the Contract. Such requirement shall be set forth in the Purchase Order.

**1.09 Suspension of Work:** The Department may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the State to do so. The Department shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any Purchase Orders. Within ninety days, or any longer period agreed to by the Contractor, the Department shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Contractor to any additional compensation.

**1.10 Termination for Convenience:** The Department, by written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

**1.11 Advertising:** The Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Department or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State, the Department, or any Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**1.12 Notice:** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery. Notices to the Department shall be delivered to the Contract Specialist, with a copy to the Office of General Counsel, 4050 Esplanade Way, Suite 260, Tallahassee, FL 32399-0950, (850) 487-1082, (850) 922-6312 (facsimile). Notices to the Contractor shall be delivered to the person who signs the Contract. Notices to Customers shall be delivered to the person who signs the Purchase Order. Any designated recipient may notify the others, in writing, if someone else is designated to receive notice.

**1.13 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE):** To the extent that a product is certified by or is available from PRIDE, and has been approved in accordance with section 946.515(2) of the Florida Statutes, it is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned. This provision is required by section 946.515(6) of the Florida Statutes; additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**1.14 Modification of Terms:** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions by Customer under the Contract. The Contract may only be modified or amended upon mutual written agreement of the Department and the Contractor. No oral agreements or representations shall be valid or binding upon the Department, a Customer, or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer unless authorized by the Department or specified in the notice of award. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. A Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**1.15 Execution in Counterparts:** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**1.16 Severability:** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.